



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	30-17
Appellant:	EK Developments on behalf of the Owners
Assessment Manager:	Harald Webber – All Construction Approvals
Concurrence Agency: (if applicable)	Cairns regional Council
Site Address:	41 Percy Street, Mount Sheridan, 4870 and described as Lot 149 on RP 890833 – the subject site

Appeal

Appeal under the *Planning Act 2016 (PA)*, Clause 229 and Schedule 1, Table 1, Item 1, against the Decision Notice of the Assessment Manager to refuse a class 10a garage. The Cairns Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building application as it did not meet the Performance Criteria of the *Queensland Development Code M. P. 1.2 P1 (a) and (b) (QDC)*.

Date and time of hearing:	10:00am on Friday 25 August 2017
Place of hearing:	The subject site
Tribunal:	Bruce Shephard– Chair James McPherson - Member
Present:	Elliott Kells of EK Development Group – Appellant Robert Ison – Owner Peta Ison – Owner Troy Ison – Tenant Jayne Proberts – Cairns Region Council - Council representative Gary Warner – Cairns Region Council - Council representative Sean Davis of All Construction Approvals – Assessment Manager

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA **confirms** the decision of the Assessment Manager to refuse the Class 10a Garage.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this Decision Notice which should be attached to the Court appeal lodgement documentation.

The following link outlines the steps required to lodge an appeal with the Court.
<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Background

The subject site is a flat block, rectangular in shape and located along a relatively straight street in a traditional style residential neighbourhood with the street frontage facing North West.

The allotment has a three metre drainage easement running along the north east or left hand boundary. This easement contains an open storm water drain. The existing dwelling has been built with only a small 600mm setback to the drainage easement and approximately 900mm setback on the opposite side boundary. There is no alternative on site location for a garage or carport to either side or rear of the dwelling.

The current owners purchased the property about 6 years ago as a three bedroom dwelling with an open double carport. Since that time the owners enclosed the open carport to convert the building into a 5 bed room dwelling with improved living and utility spaces with no undercover car parking.

The current tenant is a builder and for insurance reasons requires a secure place to leave his vehicle and trailer which hold the tools and equipment of his occupation. Elliott Kells of EK Development Group was engaged to design the addition and subsequently lodged a Concurrence referral with the Council as the proposed alteration did not comply with the QDC A1 (a). The Council Planning scheme called the Cairns Plan 2016 doesn't contain siting provision for residential dwellings so the QDC are the relevant documents for siting.

The Council assessed the application and conducted a site visit, then engaged in verbal and written correspondence with the Owners and Elliott Kells. As part of the process Council stated they would support an alternative proposal of an enclosed garage with a front wall a minimum of three metres from the front boundary with a small 300mm eave.

Elliott Kells provided further support for the unaltered proposal sighting some examples of similar constructions in the nearby streets. These examples were not located in the same street. The Council provided a Concurrence advice to refuse the building development application.

A building application was subsequently lodged with All Construction Approvals who issued a refusal of the application on the same day 12 July 2017.

As part of the appeal lodgement and during the hearing the owners and Elliott Kells provided additional examples on similar construction on allotments within the general area but not on the same street. Most of these examples were located on lots with significant site constraints like cul de sacs and corner allotments or sloping sites. The Tribunal viewed all of these examples.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 21 July 2017.
2. Form RAA 1 – Council as Referral Agency – Application form, that was lodged with Council sometime in March 2017, Council was not able to confirm the actual date during the hearing.

3. Form RAA 3 – Siting Dispensation for front boundary that was lodged with Council sometime in March 2017, Council was not able to confirm the actual date during the hearing.
4. Plans for the proposed development drawn by EK Developments dated 17 March 2017.
5. Email from Elliott Kells dated 19 April 2017 to Jayne Proberts of Cairns Regional Council.
6. Letter from Elliott Kells dated 19 April 2017 to Chief Executive Officer of Cairns Regional Council.
7. Referral Agency Advice from Cairns Regional Council dated 12 May 2017, Response number 2017/126.
8. Letter from Elliott Kells dated 12 July 2017 to Registrar of the Development Tribunals.
9. Owner's authorization to act on their interests in representing in the appeal, date 14 July 2017.
10. Building application Decision Notice from Harald Weber dated 12 July, reference number 00022069.
11. *The Planning Act 2016. (PA)*
12. *The Building Act 1975. (BA)*
13. *Queensland Development Code M.P. 1.2. (QDC)*
14. Cairns Plan 2016.

Findings of Fact

The Tribunal makes the following findings of fact:

- The dwelling has no undercover car parking as the original double carport was enclosed by the current owner.
- An application for Concurrent agency advice was lodge with the Council sometime between the 17 March 2017 and 31 March 2017.
- Council and the applicant engaged in both telephone conversations and written correspondence between 31 March 2017 and 19 April 2017.
- Council issued referral agency advice to refuse an application for the proposed development dated 12 May 2017. This advice was based on assessment against the QDC P1 (a) and (b).
- In an email from Council dated 31 March 2017 which was in the thread of the Elliott Kells email dated 19 April 2017, Council stated they would support an encroachment of 3 metres from the front wall of the proposed structure with a small 300mm eave. During the hearing the Council confirmed they would still support this proposal.
- A development application for building work was lodged with All Construction Approvals 12 July 2017.
- All Construction Approvals provided a Decision Notice refusal dated 12 July 2017 after assessing the application against all relevant building assessment provisions.

Reasons for the Decision

The tribunal confirms the decision of the assessment manager to refuse the Class 10a garage for the following reasons:

1. The proposed garage design with only a 300mm setback to the gable end eaves would present a bulky presence and create a significant change in the street scape that is not in keeping with the current street scape.

Bruce Shephard

Development Tribunal Chair

Date:

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833 Facsimile (07) 3237 1248